IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.545 OF 2005
IN
SUMMARY SUIT NO.4027 OF 2003

Tata Securities P.Ltd. ..Plaintiffs

Vs.

Shreepad L.Javadekar ..Defendant

Mr.B.B.Saraf i/b Dhruv Liladhar and Co. for the plaintiffs

Mr.Shailesh Shah i/b N.Jagtap and Co. for the defendant

CORAM : S.U.KAMDAR, J
DATED : 13TH FEBRUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.11,10,601.47 being the balance amount due and payable under the housing loan. The principal amount being Rs.10,59,725/- and interest thereon is Rs.50,876.47.

2. The learned counsel for the defendant has contended that the present suit is not maintainable as summary suit and the summons for judgment should

be dismissed. He has contended that there is no written agreement in respect of housing loan and claim does not arise out of written contract. It has been further contended that the suit is not based on promissory note which has been executed by the defendant in respect of the said housing loan amount. It has been further contended by the learned counsel for the defendant that there was an oral arrangement arrived at between the parties that in an event if the defendant resigns from the job then the defendant will have to repay the balance amount outstanding of the housing loan but if he is asked to leave the job then the plaintiffs company will write off the balance claim of housing loan and thus, the defendant is not liable to make payment of balance amount of housing loan.

3. I am not inclined to accept any of the submissions made by the learned counsel for the defendants. Firstly, as far as maintainability of suit is concerned, I am of the opinion that the suit is maintainable both on the ground of written contract and on the ground that promissory note which has been executed by the defendant in the

present suit. Written Contract can be spelt out from the correspondence which are annexed to the plaint particularly Ex.B which is the application of defendant for housing loan and Ex.E wherein defendant has admitted and acknowledged that housing loan has been disbursed to him and he has received Rs.13 lacs towards the purchase of the flat from the plaintiffs company.

4. In my opinion, in the light of the aforesaid, written contract is spelt out about the housing loan advanced to defendant and to repay the same from time to time in instalments. Apart from the aforesaid, there is no dispute that the defendant has availed of the said loan. In fact defendant has also made part repayment in respect of housing loan which has been received by him. Defendant has also executed demand promissory note in respect of the said housing loan amount of Rs.13 lacs. It is also annexed at Ex.F to the plaint. However, the learned counsel for the defendant has contended that the demand promissory note is blank in date and interest rate is not mentioned and therefore the same should not be accepted.

5. I am not inclined to accept the aforesaid contentions in the light of the fact that there is no dispute as to the execution of demand promissory note and receipt of the amount covered under the said demand promissory note of Rs.13 lacs towards the housing loan amount for the purchase of the said flat at Borivali.

6. The last contention advanced on merits is that the defendant is not liable to make payment because the plaintiffs has asked defendant to leave the job and therefore under the oral arrangement arrived at plaintiffs agreed that claim of the defendant will be written of. In so far as the aforesaid contention is concerned, it cannot be accepted because neither public limited company nor any individual person would agree to provide free flat to the defendant and thus, the defence raised is totally bogus, moonshine and without any merits. I am of the view that the defendant has made out no case whatsoever to grant any leave to defend in the present suit. In that view of the matter, I pass the following decree

7. There shall be decree in favour of the plaintiffs and against the defendant for the sum of Rs.11,10,601.47 with further interest @ 7% p.a. on the principal amount of Rs.10,59,725/-. Summons for Judgment is made absolute accordingly. Suit disposed of accordingly. Refund of Court Fee as per rules.